

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.712 of 2000 to 719 of 2000

with

First Appeals Nos.720 of 2000 to 738 of 2000

with

First Appeals Nos.739 of 2000 to 760 of 2000

with

FIRST APPEAL No.761 of 2000 to 776 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SP. LAND ACQUISITION OFFICER

Versus

GUMANSANG KHUMANSANG

Appearance:

Mr.A.D. Oza, Government Pleader, for appellant No.1
in F.A. Nos.739 to 760
of 2000 and 761 to 776 of 2000.

Mr. V.M.Pancholi, AGP, for appellant No.1 in F.A. nos.712
to 719 of 2000 and 720 to 738 of 2000.

Mr.H.L. Jani for appellant No.2 in all the First Appeals.
Mr.Sunil K. Shah for respondent No.3 in F.A. No.737 of

2000.

Mr.A.J. Patel with Mr. Yatin Soni for respondents.

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 18_/08/2000

COMMON C.A.V. Judgment: (Per: Kadri, J.)

1. Appellants, in the above two groups of First Appeals, which are filed under Section 54 of the Land Acquisition Act, 1894 (to be referred to as the "Act" for short) read with Sec.96 of the Code of Civil Procedure, have challenged common judgment and award dated April 16, 1999, passed by learned 3rd Extra Assistant Judge & Special Judge (LAR), Ahmedabad (Rural), at Mirzapur, in Land Reference Case Nos. 170 of 1996 to 177 of 1996; 218 of 1996 to 239 of 1996; 240 of 1996 to 258 of 1996 and 521 of 1996 to 536 of 1996. As common questions of facts and law are involved in these two groups of First Appeals, we propose to dispose of them by this common judgment.

2. Executive Engineer, Narmada Project, Dholka Branch Canal Division 3/2, Gandhinagar, sent a proposal to the State Government to acquire agricultural lands of village Godhavi, Taluka Sanand, District Ahmedabad, for the public purpose of construction of Narmada Project Dholka Branch Canal of Sardar Sarovar Narmada Corporation Limited. The said proposal was scrutinized by the State Government and, having satisfied that the said lands were required for public purpose, preliminary notifications under Section 4(1) of the Act were published in the Government Gazette on September 9, 1991, September 24, 1991, and May 4, 1992. The Land Acquisition Officer, after following procedure prescribed under Section 5 of the Act, submitted his report to the State Government. On scrutiny of the report submitted by the Land Acquisition Officer, declarations under Section 6 of the Act were made which were published in the official gazette on April 30, 1992, September 5, 1992 and November 5, 1992. Notices under Section 9(3)(4) of the Act were served on the land owners and, in response to the said notices, the land owners had filed their claim before the Land Acquisition Officer. The Land Acquisition Officer, on the basis of materials placed before him, made his award in Land Acquisition Case No.31/91 on September 12, 1994; in Land Acquisition Case No.38 of 1991, on August

6, 1994 in Land Acquisition Case No.38 of 1991 on August 6, 1994, in Land Acquisition Case No.60 of 1991 on April 6, 1994 and in Land Acquisition Case No.61 of 1991 on November 1, 1994, and offered compensation of acquired lands at the rate of Rs.2.50 per sq.mtr. for non-irrigated lands; Rs.3.75 per sq.mtr. for irrigated land, and Rs.9.50 per sq.mtr. for non-agricultural land. The respondents were of the opinion that compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court, Ahmedabad (Rural), for determination of adequate compensation. Accordingly, references were made to the District Court, Ahmedabad (Rural), which were numbered as stated hereinabove.

3. Before the Reference Court, the respondents claimed compensation for acquired lands situated at village Godhavi at the rate of Rs.200/- per sq.mtr. In the applications, it was pleaded by the respondents that village Godhavi was having all the facilities such as electricity, water, primary and secondary schools, cooperative housing societies, etc.

4. Appellant No.1 filed its written statement at Exh.9, whereas appellant No.2 filed written statement at Exh.13, inter alia, contending that the Land Acquisition Officer had taken into consideration location of each piece of land, prevailing market rate, type of land, and other relevant factors, and awarded a just and adequate compensation to the claimants. It was further averred that the Land Acquisition officer had also taken into consideration sale instances of nearby area which had taken place since last five years prior to the date of acquisition and had, thereafter, offered market price of acquired lands. It was claimed that compensation claimed by the claimant was excessive and exaggerated and, therefore, the applications be dismissed with costs.

5. By consent of the parties, all the reference applications were consolidated and common issues were framed at Exh.14 in Land Acquisition Case No.170 of 1996. The claimants to substantiate their claim of Rs.200/- per sq.mtr. examined (1) Raghubhai Tanubhai Vaghela at Exh.30, (2) Kesarisinh Baldevsinh at Exh.42 and (3) Natwarsinh at Exh.36. The claimants produced documentary evidence such as, copy of 7/12 extracts, certificate issued by the Talati cum Mantri of Godhavi Gram Panchayat, and previous awards in respect of acquired lands of villages Nidhrad and Sanand. On behalf of the

appellants, Executive Engineer, Dilipkumar Kantilal Shah, was examined at Exh.45, Special Land Acquisition Officer, Unit No.III, Ahmedabad, Mr.Chimanbhai Ramanbhai Sangada at Exh.47.

6. The Reference Court, after appreciating oral as well as documentary evidence, deduced that, though the claimants had deposed that they were getting net income of Rs.15,000/- out of sale of agricultural produces, which were raised on acquired lands, they had not produced cogent and reliable evidence with regard thereto and the claim with regard to agricultural produces was excessive and exaggerated. The Reference Court deduced that map produced on the record of the case indicated that village Godhavi was situated near previously acquired lands of village Sanand and boundaries of both the villages were touching each other. It was further deduced that the boundaries of village Nidhrad were also touching boundaries of village Godhavi. It was further deduced that village Godhavi was situated in developed area, and at a distance of 8 kms from Ahmedabad. It was deduced that no previous award was available with regard to lands of village Godhavi and, therefore, for the determination of market value of the acquired lands, previous awards of adjoining villages Sanand and Nidhrad shall have to be taken into consideration. The Reference Court observed that agricultural lands of village Sanand were acquired by notification under Section 4(1) of the Act published on September 5, 1991, and market value of the said land was determined by the High Court in appeal at the rate of Rs.90/- per sq.mtr. The Reference Court further observed that previous award in respect of agricultural lands of village Nidhrad which were placed under acquisition by notification issued under Section 4(1) of the Act, which was published on December 20, 1984, revealed that market price of lands of village Nidhrad which were acquired in December 1984 was determined by the Reference Court at the rate of Rs.50/per sq.mtr. As notification of acquired lands of village Nidhrad was issued in December 1984 whereas notification of present acquired lands of village Godhavi was issued in 1991 and as there was gap of seven years between issuance of two notifications, the Reference Court gave rise of price at 10% every year and determined market value of present acquired lands of village Godhavi at the rate of Rs.89.50 ps per sq.mtr. for non-irrigated lands and Rs.90.75 per sq.mtr. for irrigated lands, and in respect of Non-agricultural lands, which was subject matter of Land Acquisition Case No.257 of 1996, the Reference Court determined market price at the rate of Rs.139.50 per sq.mtr. The aforesaid determination of

market value by the Reference Court in respect of different kinds of agricultural lands and non-agricultural lands of village Godhavi has given rise to filing of the aforesaid two groups of appeals by the appellants.

7. Learned Government Pleader, Mr. A.D. Oza, assisted by Mr. V.M. Pancholi, learned AGP, for appellant No.1, and learned counsel Mr. H.L. Jani for appellant No.2 have taken us through entire record and proceedings of the Reference Court. Learned Government pleader for the appellants has vehemently submitted that determination of market value of lands of village Godhavi by the Reference Court was highly excessive. It is further submitted that the Reference Court had erred in placing reliance on previous award of village Nidhrad, notification of which was published in 1984 for determination of market value of present acquired lands. Learned counsel for the appellants further submitted that the respondents-claimants had not led sufficient evidence before the Reference Court to establish that lands of previous award and present acquired lands were comparable. Learned counsel for the appellants submitted that determination of market value of acquired lands was based on no evidence and, therefore, these appeals be allowed and judgment and award of the Reference Court be quashed and set aside.

8. Learned counsel for the respondents submitted that acquired lands of village Godhavi were of equal level and having high fertility and agriculturists were taking two crops in a year. It is submitted that, on acquired lands, tuver, cotton, etc. were raised and the agriculturists were getting income of Rs.25,000/per bigha every year. Learned counsel for the respondents claimed that population of village Godhavi was 10,000 and the village was having facilities of water, electricity, hospital, high-school, post-office, drainage connection, etc. It is further submitted that village Godhavi was connected with all other villages and towns by S.T. Bus and the railway station was situated in the sim of village Godhavi. It was further claimed that many housing societies had come up near village Godhavi and 'Pleasure Club' was situated on the State Highway. Learned counsel for the respondents stressed that boundaries of village Sanand and village Nidhrad were touching each other. Learned counsel for the respondents further submitted that acquired lands of village Nidhrad were in all respects comparable with present acquired lands. Learned counsel for the respondents further submitted that agricultural lands of village Sanand which

were acquired in the year 1991, were also having similar advantageous features as compared with present acquired lands. Learned counsel for the respondents further submitted that the Reference Court had awarded Rs.65/per sq.mtr for acquired lands of village Sanand which award was challenged in the High Court, wherein, the High Court had awarded Rs.90/- per sq.mtr as compensation for acquired lands of village Sanand. Learned counsel for the respondents has drawn our attention to the award of the Land Acquisition Officer which was produced at Exh.5, wherein, in paragraph 5, the Land Acquisition Officer had described fertility and situation of acquired lands by stating that acquired lands were of jirayat type wherein crops of bajri, juwar were raised and acquired lands were having facility of irrigation. It is also mentioned in the said paragraph by the Land Acquisition Officer that acquired lands were at a distance of 1/2 kms from the village site. It has also been mentioned in award Exh.5 that village Godhavi was situated near Ahmedabad-Ghumasan-Sanand road and railway station was situated at a distance of 1/2 km. Learned counsel for the respondents, in the end, submitted that, looking to the fertility of acquired lands, their situation and nearby building activities which had taken place, compensation awarded by the Reference Court for acquired lands of village Godhavi was just, adequate and reasonable and, therefore, the appeals be dismissed with costs.

9. Evidence of claimants' witnesses indicates that present acquired lands were having high fertility and the claimants were raising two crops in a year. The claimants' witness, Raghubhai Tanubhai Waghela, Exh.30, deposed that all acquired lands were having same fertility and were situated adjoining to each other and the claimants were raising two crops in a year and they were selling agricultural produces in Sanand Agricultural Market Yard which was situated at 3 kms away from acquired lands. He emphatically deposed that the claimants were getting net agricultural income of Rs.25,000/- per year per bigha. From the evidence of the claimants' witness, it becomes clear that village Godhavi was having all the facilities of transportation by road as well as by rail. Witness Raghubhai Tanubhai Waghela also deposed that in the year 1983 agricultural lands of village Godhavi were converted into non-agricultural use and the lands were divided into plots where many housing societies for high income group have been constructed. The witness also deposed that residents of village Godhavi were having business connections with Sanand and Ahmedabad. It is stated that agricultural lands of

Sanand were acquired for construction of road by notification dated September 5, 1991. He claimed that acquired lands of Sanand and present acquired lands were situated at a distance of 1 km. He further claimed that fertility of present acquired lands was higher than acquired lands of Sanand. He referred to previous award in respect of acquired lands of village Sanand rendered in Land Acquisition Reference No.623 of 1995 to 627 of 1995 wherein the Reference Court had determined market value of acquired lands of village Sanand as on September 5, 1991, at the rate of Rs.65/- per sq.mtr. He deposed that the claimants of acquired lands of village Sanand had challenged the award of the Reference Court in the High Court claiming higher compensation and the High Court had, by judgment and order dated September 29, 1998, rendered in First Appeals Nos.3892 of 1998 to 3896 of 1998, had determined market value of acquired lands of village Sanand at the rate of Rs.90/- per sq.mtr as on September 5, 1991. The witness, during his deposition, produced previous award of the Reference Court rendered in Land Acquisition Reference Nos. 1630 of 1987 to 1645 of 1987 which was in respect of acquired lands of village Nidhrad. Notification of acquired lands of village Nidhrad was published on December 20,1984, wherein, the Reference Court by common judgment and award dated March 5, 1994, had determined market value of acquired lands of village Nidhrad at the rate of Rs.50 per sq.mtr. as on December 20, 1984. It is not brought to our notice that award of acquired lands of village Nidhrad was challenged in the higher forum. The witness examined by the claimants had produced certified copy of 7/12 extracts, which indicated that all acquired lands were having similar fertility and the claimants were raising two crops in a year. The claimants had produced certificate issued by Talati-cum-Mantri of Godhavi Group Panchayat, at Exh.43. In the said certificate, it was mentioned that all acquired lands were having facility of irrigation and were of equal level and the claimants were raising two crops in a year. The certificate further indicated that boundaries of village Godhavi were touching the boundaries of villages Sanand, Nidhrad, Manipur and Ghumasan. It is also mentioned in the said certificate that village Godhavi was connected by road and rail with all cities, taluka headquarters and villages. The certificate further mentions that many agricultural lands were converted into non-agricultural use and many housing societies had come up in the village. It is also mentioned that village Godhavi was fast developing because it was nearer to Ahmedabad city. Map produced at Exh.41 indicates that acquired lands were situated near village site and just touching the State

Highway.

10. The appellants had examined Deputy Executive Engineer Mr. Dilipkumar Kantilal Shah at Exh.47. The witness, in examination in chief, deposed that nearest villages to acquired lands were Garodai, Manipur and Vansajada. He admitted that agricultural lands of village Godhavi and nearby acquired lands were having the same fertility. He stated that acquired lands were situated at a distance of 500 to 700 meters from the village site. He also admitted that Sanand-Ghumasan-Ahmedabad road was passing nearby acquired lands. The witness, during deposition, produced sale deeds at Exh.43 and Exh.44, but the said sale deeds were not proved since neither vendor nor vendee were examined. Therefore, in our opinion, the Reference Court had rightly not considered those sale deeds for the purpose of determination of market value of present acquired lands. During his cross examination, the witness admitted that village Nidhrad was adjoining to village Godhavi where present acquired lands were situated. The witness claimed that village Godhavi was situated at a distance of 10 to 11 kms from Ahmedabad city, and Sanand was situated at a distance of 18 kms from Ahmedabad. The witness admitted that a farm house was situated in village Godhavi. The witness admitted that village Godhavi was nearer to Ahmedabad City than village Sanand.

11. The appellants had examined Land Acquisition Officer Mr. Chimanbhai Romanbhai Sangada at Exh.47. He deposed that, while offering price of the acquired lands, Land Acquisition Officer Mr. J.J. Joshi had taken into consideration sale transaction of last five years prior to issuance of notification under Section 4(1) of the Act. He deposed that the claimants had not produced documentary evidence in respect of their claim for compensation of acquired lands. In cross examination, he admitted that he had taken charge as Land Acquisition Officer from his predecessor in office Mr. J.J. Joshi from December 2, 1998 and he had no personal knowledge prior to that date. He admitted that the Land Acquisition Officer, after ascertaining from the revenue records, had mentioned in the award that all acquired lands were having irrigation facilities. He deposed that price of the land was fixed by the Price Fixation Committee. In our opinion, evidence of Land Acquisition Officer is not useful for the purpose of determination of market price of present acquired lands and he had taken over charge as Land Acquisition Officer of present acquired lands on December 2, 1998 i.e. after making of the award in September 1994.

12. In the case of State of Gujarat vs. Gobar Rupa, reported in 1995 (1) GLR 1, the Division Bench of this Court held as under:

"Compensation has to be awarded in terms of the provisions of Section 23 of the Land Acquisition Act. The principles for determining the said compensation have by now been clearly enunciated in different decisions of the Supreme Court and other Courts. On behalf of the appellants, it has been contended that ratio of the decision of the Supreme Court in Printers House Pvt. Ltd. vs. Mst Saiyadan, JT 1993 (6) SC 123 is relevant and should be followed. In that case for determination of the market value of the acquired plots of land the High Court had followed the average price basis. The Supreme Court, however, observed that, "if a land sold under a sale deed is comparable with the acquired land, then the Courts will have to ordinarily recourse of comparable sales method of valuation to determine the market value of the acquired land. The price fetched under a genuine sale-deed could form the basis for determining the market value of an acquired land and market value determined by an award made under the Act, for an earlier acquired land, either by the Land Acquisition Officer or the Court could also form the basis for determining the market value of subsequently acquired land."

Keeping in mind the aforesaid ruling of the Supreme Court, in our view, in absence of evidence with regard to sale deed in respect of the same village, the Reference Court was justified in placing reliance on previous award of acquired lands of village Nidhrad. The claimants had deposed with regard to agricultural income derived from acquired lands, but had not produced cogent and reliable evidence to the effect that they were getting net income of Rs.25,000/- per year per bigha.

13. The Supreme Court in the case of Special Land Acquisition Officer vs. P. Mira, reported in AIR 1984 Supreme Court 774, has observed that, "the function of the Court in awarding the compensation under the Act is to ascertain the market value of the lands at the date of notification under section 4(1) and the methods of valuation may be (1) opinion of experts; (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired." The Supreme Court further observed that, "normally the method of capitalising the actual or immediately prospective profits or the rent of a number

of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available. The Supreme Court in the above stated decision further observed that, in regard to investment in agricultural lands, there are many imponderables inasmuch as the investor runs a much greater risk than the risk that he runs in investment in housing which consists in vagaries of weather and other uncertainties. There is no security of principal, no liquidity of investment nor any certainty of income. The appreciation of principal or income is also uncertain."

14. The main anxiety of the authority or Court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of S.23 of the Act is to see that the affected person in an acquisition proceeding is placed in the same position, as far as possible, as he would have been, had there been no acquisition. So, the ultimate purpose and policy enshrined in S.23 of the Act is to see that the affected person or owner of the property acquired should get fair and just amount of compensation. The Reference Court had adopted a method for determining market value of present acquired lands on the basis of previous award Exh.40 in respect of acquired lands of village Nidhrad. When no other reliable evidence was available, the approach of the Reference Court in adopting and accepting the method of placing reliance on previous award Exh.40 is quite just and correct in the facts and circumstances of the present case.

15. Mr.A.D. Oza, learned Government Pleader, ably assisted by learned counsel Mr. H.L. Jani for the Acquiring Body and learned Assistant Government Pleader, Mr. V.M.Pancholi, has strenuously urged that previous award Exh.40, in respect of acquired lands of village Nidhrad, whose notification under Section 4(1) of the Act was published on December 20, 1984, was not relevant and comparable for the purpose of determination of market price of present acquired lands of village Godhavi. Learned Government Pleader further submitted that market value, which was determined in the previous award Exh.40 of acquired lands of village Nidhrad, was based on previous judgment and award rendered in Land Acquisition Case No.278 of 1989 which was in respect of acquired lands of village Sanand and, therefore, indirectly, the Reference Court had relied upon previous award of village Sanand for the purpose of determination of market price of present acquired lands of village Godhavi. Learned Government Pleader further submitted that village Sanand

was situated at a distance of 7 kms from acquired lands and, therefore, determination of market value by the Reference Court by indirectly relying upon previous award of village Sanand, is erroneous.

16. The aforesaid submissions of learned Government Pleader for the appellants, in our opinion, do not deserve any merit. It becomes evident that, right from 1983 onwards, till the date of Section 4 notification of present acquired lands, which was published in the year 1992, many acquisitions had taken place of the lands of adjoining villages, Nidhrad, Sanand and Godhavi. It should not be lost sight of the fact that, as village Godhavi was situated near Ahmedabad city, many housing societies had come up and, as the village was situated near the State highway, and it was connected with rail also, there was fast development in the village. Many housing societies of elite people and Pleasure Club had also come up near village Godhavi. Map produced at Exh.41 also indicates that various lands of adjoining villages were placed under acquisition since last ten years prior to the date of acquisition. Map also shows that village Nidhrad was adjoining to village Godhavi. In our opinion, the Reference Court was justified in placing reliance on the previous award with regard to agricultural lands of village Nidhrad, which related to acquisition of the year 1984, wherein the market value of acquired lands of village Nidhrad was determined at the rate of Rs.50/- per sq.mtr. as on December 20, 1984. The Reference Court was also justified in not placing reliance on previous award of village Sanand which was confirmed by the High Court in First Appeal No.3892 of 1998, wherein, market value of acquired lands of village Sanand was determined at the rate of Rs.90/per sq.mtr as on September 5,1991.

17. Further submission of learned Government Pleader for the appellants that the claimants had not produced cogent and reliable evidence for the purpose of determining market value of present acquired lands, and the Reference Court had seriously erred in determining market value of present acquired lands by simply relying upon previous award in respect of lands of village Nidhrad and, therefore, the award of the Reference Court should be quashed and set aside and the matters be remanded back, deserves to be rejected. The claimants-respondents cannot be non-suited merely because they had not produced sale transaction of same village or adjoining village, which had taken place within near proximity of issuance of Section 4 notification. When the Courts had determined market value of lands of

adjoining village and when the claimants had led sufficient evidence with regard to comparability of previously acquired lands with the present acquired lands, the Reference Court was justified in placing reliance on previous award of village Nidhrad. This is not a case of total lack of evidence, wherein, the appeals deserve to be allowed and the cases require to be remanded. On the contrary, if this procedure of remand is allowed, then, it would cause more hardship to the parties and it would create burden on the public exchequer as the amount of interest and other statutory benefits would go on increasing. In our opinion, the claimants had led sufficient evidence with regard to comparability of the previously acquired lands of villages Nidhrad and village Sanand as compared to the present acquired lands. The claimants' oral evidence and the certificate issued by the Talati-cum-Mantri sufficient prove that boundaries of village Nidhrad, Manipur, Ghumasan were touching the boundaries of village Godhavi and the lands of the villages were having same fertility and the agriculturists were raising similar type of crops on similar crop pattern. Therefore, in our opinion, in absence of evidence in the nature of sale transaction, the Reference Court was justified in placing reliance on previous award, which method is well recognized by the Supreme Court in catena of decisions. (see: (i) AIR 1976 Supreme Court 651; State of Madras vs. A.M.Nanjan: (ii) AIR 1993 Supreme Court 225; Pal Singh vs. Union Territory of Chandigarh).

18. Map produced at Exh.41 indicates that present acquired lands were touching boundaries of village Nidhrad. The Reference Court had, therefore, relied upon previous award Exh.29 of village Nidhrad, notification of which was published on December 20, 1984. Evidence of claimants' witnesses as well as the witness examined by the appellants established that agricultural lands of village Nidhrad and village Godhavi were having same fertility and agriculturists of both villages were raising crops on similar crop pattern. Acquired lands of previous award Exh.29 and present acquired lands were comparable in all respects and were having similar advantageous features. For lands of village Nidhrad acquired by notification under Section 4(1) of the Act published on December 20, 1984, the Reference Court had determined market value at Rs.50/- per sq.mtr. Notifications of present acquired lands were issued on September 9, 1991, September 24, 1991, and May 4, 1992. Admittedly, there is gap of seven to eight months between issuance of notifications under Section 4(1) of the Act

for acquisition of present agricultural lands. The Reference Court was justified in giving rise of price for this gap of seven years between notifications of lands of village Nidhrad and present acquired lands. The Reference Court had adopted rise of price at 10% every year for the purpose of determination of market price of present acquired lands. In our opinion, the rate of 10% per year is some what on higher side and, therefore, rise of price at 7% is given for seven years gap between notifications of lands of village Nidhrad and present acquired lands for the purpose of determination of market price of present acquired lands. Thus, market value of irrigated acquired lands would come to Rs.85/- per sq.mtr. It is common knowledge that market value of non-irrigated lands is some what less than the market value of irrigated lands. We, therefore, determine market value of non-irrigated land 15% less than irrigated land, which would come to Rs.72.25 ps per sq.mtr. which is rounded of Rs.72.00 per sq.mtr.

19. Market value determined by the Reference Court for non-agricultural lands at the rate of Rs.139/-per sq.mtr, in our opinion, does not call for any interference. The claimants had led sufficient evidence that acquired lands were having potential value as many industrial and housing societies had come up near village Godhavi and the said village was developing very fast. Village Godhavi was hardly at a distance of 10 to 12 kms from Ahmedabad and it was nearer to Ahmedabad than another villages, namely, Nidhrad and Sanand. Statutory benefits extended in favour of the claimants by the Reference Court under Sections 23(1-A) and 23(2) are also eminently just and proper and does not call for any interference.

20. As a result of foregoing discussion, these First Appeals are partly allowed. Market value of irrigated acquired lands of village Godhavi is determined at the rate of Rs.85/- per sq.mtr. as on the relevant dates. Market value of non-irrigated acquired lands of village Godhavi is determined at the rate of Rs.72.00 per sq.mtr. as on the relevant dates. Determination of market value of non-agricultural lands of village Godhavi at the rate of Rs.139.50 per sq.mtr, is confirmed. Statutory benefit extended under Section 23(1-A) and 23(2) and interest as per the amended provision of Section 28 of the Act is eminently just and proper and does not call for any interference. However, it is clarified that the claimants would not be entitled to solatium on the 12% interest awarded under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as

per the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. The common judgment and award dated April 16, 1999, passed by learned 3rd Extra Assistant Judge & Special Judge (LAR), Ahmedabad (Rural), at Mirzapur, in Land Reference Case Nos. 218 of 1996 to 239 of 1996; 240 of 1996 to 258 of 1996 and 521 of 1996 to 536 of 1996 is modified accordingly. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(M.H. Kadri, J.)

(D.P. Buch, J.)

(swamy)